

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 14075 of 2004

Between:

Duddu Prathyusha, d/o Duddu Rajendra Babu,
c/o D.Kishore Babu, H.No.7-1-178, Gurudvar Road,
Ameerpet, Hyderabad.

..... PETITIONER

AND

1. University of Engineering, Osmania University, Rep. by its Registrar, Hyderabad.
2. University College of Osmania University, rep. by its Principal, O.U.Campus, Hyderabad.
3. P.Ambedkar, ECE Department, c/o College of Engineering, Osmania University, Hyderabad.
4. J.Divakar, ECE Department, c/o College of Engineering, Osmania University, Hyderabad.
5. G.Eshwaramma, ECE Department, c/o College of Engineering, Osmania University, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction(s) essentially in the nature of writ of mandamus by directing the respondent university to admit the petitioner into M.E./M.Tech.(ECE) Course particularly in 2nd respondent college by canceling the admission, if necessary of any of party respondent by holding the action of the Respondent University in not considering the candidature of petitioner for admission into the said course as bad illegal and violative of Article 14 and 15(4), Constitution of India, Act and pass.

Counsel for the Petitioner: MR.P.V.SANJAY KUMAR

Counsel for the Respondents 1 & 2: MR.DEEPAK BHATTACHARJEE

For Respondents 3 to 5 : None present

The Court made the following:

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION No.14075 of 2004

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ORDER:

Alleging that respondents 1 and 2 without following the reservation properly deprived of her a seat in ME/M. Tech (ECE) course, petitioner who belongs to S.C. – 'B', local as per the categorization made by the Andhra Pradesh Scheduled Castes (Rationalization of Reservation) Act, 2000 (the Act), read with the Andhra Pradesh Scheduled Castes (Rationalization of Reservation) Rules, 2000 (the Rules), filed this petition questioning the allotment of seats to Respondents 3 to 5 in preference to her. It is her contention that had the respondents followed the rules of reservation properly as per the categorization made among the Scheduled Castes, she but not the 5th respondent should have allotted the seat.

2. The contention of respondents 1 and 2 is that three seats out of 20 seats were reserved for Scheduled Castes (for short- SC) category, out of which one is reserved for SC (woman). Since 7% and 6% of 20 seats in SC 'B' and SC 'C' category come to one seat each, one seat is reserved for SC 'B' and one seat for SC 'C' category candidates and taking into consideration the 33 1/3% reservation given to the women category one seat is reserved for either to SC 'B' woman or SC 'C' woman candidate, and accordingly keeping in view the rankings obtained by the students, respondents 3 to 5 were allotted the seats and so the petitioner is not entitled to any relief.

3. As per my directions the learned standing counsel for respondents 1 and 2 produced the relevant file. From that file it is seen that in respect of the seats allotted

to College of Engineering, Osmania University, M.E. (ECE) course for 2004-05 the first seat, as per the roster is reserved for SC (woman) and second and third seats reserved for SC 'B' or SC 'C' candidates.

4. The contention of the learned counsel for the petitioner is that since the Registrar of the university who sworn to the counter affidavit on behalf of respondents 1 and 2 stated as follows in para-7 of his affidavit-

"The allotment is made as per the norms and the seats were to be filled as follows:

SC-B - 1 seat

SC-C - 1 seat

SC-B/C - 1 seat

If the first two seats are filled with boys and if they belong to SC-B category and SC-C category, then the woman candidate must belong to either SC-C or SC-B category, as the case may be depending on the merit i.e., GATE percentile. It must be ensured that the admitted candidates under SC category should be, one seat to SC-B category, one seat to SC-C category and one seat to SC-B/C category who ever comes first in the merit order. Further, for local, 85% of the seats are reserved and the remaining 15% unreserved for non-local candidates. Out of the 20 seats, three candidates can be admitted under non-local category provided they come under merit. These three seats are not earmarked to any category. These seats will be filled up according to the merit to whichever category they may belong. The data of SC candidates admitted into ME (ECE) course of Osmania University under this category is as follows:

1. P. Ambedkar SC-C local 91.4% (GATE)
2. J. Divakar SC-C local 89.12%(GATE)
3. Ms.G. Eswaramma SC-B non-local 87.87%(GATE)

Since the petitioner belongs to SC-B local with a GATE percentile of 75.7 and B.E. second division only and Ms.Eswaramma, SC-B, non-local with 87.87% GATE was allotted the SC women seat. Hence, the petitioner's right is not denied. Out of three non-local seats, which are unreserved, only two seats were filled up with non-locals up to the percentile of 87.87. Two SC-C local candidates P.Ambedkar and J.Divakar were admitted whose percentile is 91.4 and 89.12 respectively. Therefore, the third seat must be filled up by SC-B woman candidate only. At this instance, as per the merit order, Ms. G.Eswaramma, non-local with a percentile of 87.87, SC-B woman candidate has been admitted."

it is clear that respondents 1 and 2 did not follow the roster properly and had they followed the roster properly, petitioner would have got a seat. The contention of the learned standing counsel for respondents 1 and 2 is that third respondent who

secured 91.4% marks belongs to SC 'C' category and got 194th rank, fourth respondent who obtained 89.12% marks belonging to SC 'C' category got 235th rank, one T.Sangeetha, SC 'B' candidate who obtained 78.68% marks and got 265th rank and petitioner who belongs to SC 'B' category obtained 75.7% marks and got 276th rank, and so even if 5th respondent was not considered in the first seat reserved for woman, petitioner would not have got the seat as it would have gone to T.Sangeetha and so it is clear that respondents 1 and 2 did not commit any irregularity in allotment of the seats.

5. As stated earlier, the first seat as per the roster should go to SC woman candidate belonging to either 'B' or 'C' category. So, the fact that the affidavit filed on behalf of respondents 1 and 2 shows that the third seat is reserved for SC 'B/C' is of no consequence. Even assuming that respondents 1 and 2 committed an error in selecting the 5th respondent who is a non-local candidate to fill up the first vacancy, petitioner cannot have any benefit because that seat would have gone to T.Sangeetha, who belongs to SC 'B' community and who got a higher percentage and rank than the petitioner. If the first seat is filled by woman candidate, the other two seats go to either 'B' or 'C' category in SC community. Even assuming that respondents 1 and 2 committed any error in preferring candidates belonging to SC 'C' category for both the seats, and should have given one to 'B' and one to 'C' category, one T.S.Kanteswara Rao, belonging to SC 'B' and who secured 89.65% of marks and 229th rank, would have got that seat but not the petitioner. From the list produced by respondents 1 and 2 it is seen that some other candidate belonging to SC 'B' category got more percentage of marks and superior rank than that of the petitioner. They all applied for the same ME (ECE) group. Therefore, it cannot be said that respondents 1 and 2 did not follow the rule of reservation properly.

6. Though none of the learned counsel argued this point, judicial notice can be taken of the fact that the apex Court had struck down the Act in **E.V.CHENNAIAH v. STATE OF ANDHRA PRADESH**. It is well known that when an Act is struck down as unconstitutional the same is to be treated as non-est (see **DEEPCHAND v. STATE OF U.P.** and **JAGANNATH v. AUTHORISED OFFICER**; and in "A Treatise on the Constitutional Limitations" by Thomas M. Cooley (1972 edition) under the

head 'consequences if a statute is void' at page 188 it is observed

“When a state is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it, and no one can be punished for having refused obedience to it before the decision was made. And what is true of an act void *in toto* is true also as to any part of an act which is found to be unconstitutional, and which, consequently, is to be regarded as having never, at any time, been possessed of any legal force.”

and so seats can be reserved only for SC candidates, without any sub classification, who would be entitled to admission as per their merit and rank in GATE. All Respondents 3 to 5 have superior ranks and have obtained more marks than the petitioner. In fact apart from respondents 3 to 5 there are other candidates who have secured higher ranks and marks than petitioner and so petitioner, any way, would not be entitled to the relief sought.

7. Hence, the petition is dismissed. No costs.

(C.Y.Somayajulu, J.)

Date:17--03--2005

Cvrk

To

1. The Registrar, University of Engineering, Osmania University, Hyderabad.
2. The Principal, University College of Osmania University, O.U.Campus, Hyderabad.
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